AF 1617

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Docket No.: 209060US0

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

RE: Application Serial No.: 09/884,949
Applicants: Isabelle AFRIAT
Filing Date: June 21, 2001
For: COMPOSITION IN THE FORM OF A WATER-IN-OIL EMULSION WITH A VARIABLE SHEAR RATE AND METHODS OF USING THE SAME
Group Art Unit: 1617
Examiner: L. Wells

SIR:

Attached hereto for filing are the following papers:

Request for Reconsideration;
Rule 132 Declaration of
Veronique Chevalier w/Attachments (Tabs A-D, Executed); and
Petition for Extension of Time (1 Month).

Our credit card payment form in the amount of **$110.00** is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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209060US0

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF	:	
ISABELLE AFRIAT	:	EXAMINER: WELLS
SERIAL NO: 09/884,949	:	
FILED: JUNE 21, 2001	:	GROUP ART UNIT: 1617

FOR: COMPOSITION IN THE FORM OF A WATER-IN-OIL EMULSION WITH A VARIABLE SHEAR RATE AND METHODS OF USING THE SAME

REQUEST FOR RECONSIDERATION

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Further in response to the Office Action mailed October 23, 2003, Applicant respectfully requests reconsideration of the present application in view of the following remarks.

Initially, Applicant would like to thank Examiner Wells for the courteous and helpful Interview conducted April 8, 2004, which materially furthered prosecution in this case.

During the Interview, the Examiner indicated that Applicant had made a sufficient showing of unexpected results for compositions containing 85% or more aqueous phase. However, the Examiner indicated that Applicant had not made a sufficient showing for compositions containing 80% aqueous phase.

To address the Examiner's concerns, Applicant submits herewith a new Rule 132 declaration demonstrating that compositions containing 80% aqueous phase yield unexpected "breaking" results.

As indicated in the declaration, Tabs A and B attached thereto are two graphs for composition P5 (example 1 of the present application) which contains 80.5% aqueous phase. The graph at Tab A is the same as the graph for P5 submitted with the July 24, 2002, Rule 132 declaration except that this graph has a larger gradient scale. The graph at Tab B is plotted according to a linear scale rather than a gradient scale. Both graphs reflect sharply sloping lines for composition P5.

The Rule 132 declaration explains that the results in these graphs indicate that W/O emulsions containing 80% or more aqueous phase readily "break" (that is, suddenly become fluid) under shear stresses applied to the emulsions, and that these results indicate that W/O emulsions containing 80% or more aqueous phase readily "break" when applied to skin. The declaration further explains that when a W/O emulsion "breaks," more of the aqueous phase becomes available for contact with the skin to which the emulsion is applied, making the W/O emulsion feel less heavy and oily to the skin. Having more aqueous phase available for contact with the skin gives the W/O emulsion a fresher feeling upon application to the skin.

For sake of comparison, Tabs C and D attached to the declaration are two graphs for comparative example CM 3/5 which contains 70% aqueous phase. The graph at Tab C, like the graph at Tab A, has a larger gradient scale. The graph at Tab D, like the graph at Tab B, has a linear scale rather than a gradient scale. Both graphs reflect flat, non-sloping lines for composition CM 3/5.

The Rule 132 declaration explains that the results in these graphs indicate that W/O emulsions having 70% or less of the same aqueous phase (that is, emulsion CM 3/5) do not readily "break," and that W/O emulsions having 70% or less aqueous phase do not have as much aqueous phase available for contact with the skin and, thus, do not have the same feeling of freshness upon application which W/O emulsions having 80% or more aqueous phase have.

The declaration explains that this difference in "break" properties and, thus, ability to afford freshness upon application to skin between W/O emulsions containing 80% or more aqueous phase and those containing 70% or less aqueous phase is significant in the cosmetic field where freshness upon application to skin is desirable in products. Moreover, the declaration explains that this difference between such emulsions was unexpected and surprising.

In view of the above, Applicant respectfully submits that unexpected results for compositions containing 80% aqueous phase have also been demonstrated. Thus, unexpected results have been demonstrated for the aqueous phase range being claimed.

The Rule 132 declarations submitted in this case and the examples in the specification are more than sufficient to overcome the pending § 103 rejections. The declarations demonstrate that W/O emulsions containing 80% or more aqueous phase "unexpectedly and surprisingly" break more readily than emulsions containing less aqueous phase, meaning that the former compositions have more aqueous phase available for contact with skin than the latter emulsions. The declarations indicate that this difference is significant because it provides W/O emulsions having 80% or more aqueous phase a fresher feeling upon

application, an important characteristic in the cosmetic field. The declarations also demonstrate that compositions corresponding to Mellul's Example 24 are unsuitable for use in the cosmetic industry, unlike the claimed invention. Finally, the examples in the present specification demonstrate that compositions containing the claimed silicone surfactant are more stable under fluctuating temperature conditions than compositions containing other silicone surfactants, making the former compositions better suited for commercial production, storage and transport than the latter compositions.

In view of the above, Applicant respectfully requests that the rejections under 35 U.S.C. §103 be withdrawn.

Applicant believes that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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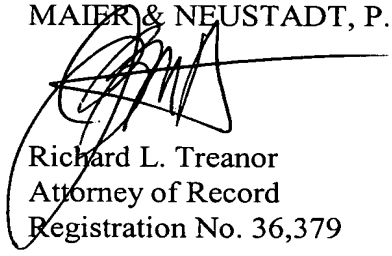

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